

HIPAA

Privacy 2 Business Associates and Contracts

**RICHARD
CALDWELL**

DHFS



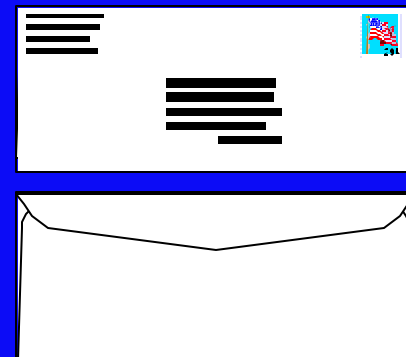
HIPAA Privacy 2

- **Business Associates**
 - definition/examples
 - contract elements
- **Chain of trust agreements**
- **Model contracts**



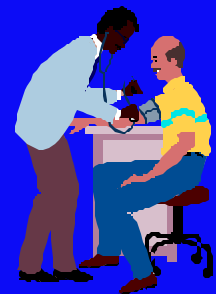
Business Associate Defined

- Individual or entity acting on behalf of the C.E.
 - assist in the performance of function
 - using or disclosing PHI



Business Associate Typical Functions

1. Claims processing or administration
2. Billing
3. Data analysis, processing or administration
4. Benefit management
5. Utilization review
6. Practice management
7. Quality assurance
8. Repricing
9. Legal if PHI involved
10. Accreditation



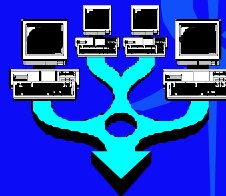
Business Associates Relationships



- **Hospital / billing company**
- **Health plan / outsource I.T.**
- **Medical group / practice management company**
- **Hospital / consultant / billing, coding practice**
- **Hospital / document shredding service**

Business Associates - Not

- Members of C.E. workforce
- Providers limited to treatment of patients
- Marketing partners acting on own behalf
- Banks processing credit card payment
- Courier service
- Physician in network



Business Associate Exceptions

- Rules do not apply to the following
 - Treatment -
 - disclosures by a C.E. to a health care provider
 - related to treatment
 - Financial transaction
 - if financial institution only processes
 - financial transactions in payment of health care



Business Associate Exceptions

- Rules do not apply to the following
 - Group health plan / plan sponsor -
 - Organized health care arrangements (OHCA)
 - IPA's and hospital medical staff



Provisions of B.A. Agreements

- **Not to use PHI**
 - other than agreed to or
 - permitted by law
- **Use appropriate safeguards**
- **Report to C.E. any disclosure not agreed to**
- **Ensure agents and subcontractors agree to same provisions**

Provisions of B.A. Agreements

- **Make available to C.E. information**
 - necessary to comply with patients rights
- **Make available to DHHS**
 - B.A. internal practice
 - books and records relating to PHI
- **Return/destroy information**
 - upon termination
 - if law precludes destruction, agreement provisions apply until destruction

Business Associate Transition Period

- Permits C.E.s to continue *contracts in effect at time of modification*
- Up to April 14, 2004 or date of modification
 - whichever is earlier
 - Extension does not apply if contract *is renewed or modified prior to April 14, 2003*
- Oral contracts not eligible for extension

Business Associate Transition Period

- **Automatic renewal contracts are eligible for transition**
- **C.E. not relieved of obligation**
 - **for harmful effect of known PHI disclosure**



Identifying Business Associates

Business Associate Scenario 1

- Rendering provider provides treatment ~~on behalf~~ of health plan (c.e.)
 - Rendering provider manually bills health plan
 - Health plan pays rendering provider
- Question –
 - Is rendering provider a Business Associate of health plan?
 - Is health plan a Business Associate of provider?

Business Associate Scenario 2

- Rendering provider provides treatment ~~on behalf~~ of health plan (c.e.)
 - Rendering provider electronically bills health plan
 - Health plan pays rendering provider
- Question –
 - Is rendering provider a Business Associate of health plan?
 - Is health plan a Business Associate of provider?

Business Associate Scenario 3

- Rendering provider provides treatment ~~on behalf~~ of health plan (c.e.)
 - Rendering provider bills through IPA (billing provider)
 - Health plan pays IPA
 - IPA pays rendering provider
- Question –
 - Is rendering provider a Business Associate of health plan?
 - Is health plan a Business Associate of provider or IPA?
 - Is IPA a Business Associate of either provider or health plan?

Business Associate Scenario 4

- Billing provider (IPA- Independent Practice Agreement) bills health plan (c.e.) listing rendering provider
 - Health plan pays IPA
 - IPA pays rendering provider
- Question –
 - Is billing provider (IPA) a Business Associate of health plan or rendering provider?
 - Is health plan a Business Associate of provider or IPA?
 - Is rendering provider a Business Associate of either IPA or health plan?



Business Associate Scenario 5

- **Billing provider and rendering provider are same**
 - Provider (1) refers health plan patient to Provider (2)
 - Both providers bill health plan
 - Health plan pays both providers
- **Question –**
 - Is provider (1) a Business Associate of health plan or provider (2)?
 - Is provider (2) a Business Associate of health plan or provider (1)?
 - Is health plan a Business Associate of providers (1) and/or (2)?



Other Business Associate *Scenarios*

- **Provider engages services of billing company**
- **Provider engages attorney (purpose and access to PHI will determine)**
- **Consulting reviewing billing practice of Provider**
- **Provider engaging document shredding service**



Vendor Contracts

Model Purchasing Contract

- DHFS internet site
 - Financial Management Manual for Counties, Tribes and 51 Boards
 - Purchase of services model contract language and instructions
 - includes non-business associate providers of services
 - may include “chain of trust” or “trading partner” addendum
 - (<http://www.dhfs.state.wi.us/Grants/FMM/B7MODELCONT.htm>)
- Currently being edited for HIPAA compliance
- Will notify when completed
 - expected to be in place by October



County State Contract

- Current language may stay in place and add a business associate addendum
- Currently being edited for HIPAA compliance
- Must be approved by County and State
- Will notify when completed
 - expected to be complete for review in September



Other Contract Issues

Chain of Trust Agreements



- Agreement between C.E. and third party receiving PHI
 - parties agree to electronically
 - exchange data
 - protect transmitted data

Chain of Trust Agreements



- Covered under security rule
- Compares to the B.A. agreement under privacy except
 - B.A. may be shared in oral or written format
 - C.T. parties may exchange without B.A. rule of (acting on behalf of)

Chain of Trust Agreements



- May eventually be replaced when security rule is final
- C.T.A. may be replaced with B.A.

Trading Partner Agreements

- Transaction code sets
- Defined
 - agreement to exchange of electronic transaction
 - whether agreement is distinct or
 - part of a larger agreement

Trading Partner Agreements

- May not involve a B.A.
 - employer / health plan electronic enrollment
 - employer not a B.A. of health plan
- If included in a larger B.A.
 - T.P.A. may be separate addendum



Reciprocal B.A. Agreement

- Two C.E. may have reciprocal B.A. obligations.
 - risk pool management between medical group and hospital
 - medical group receives PHI from hospital acting on behalf of hospital to administer hospital risk pool
 - hospital shares PHI on behalf of medical group to administer same risk pool

Reciprocal B.A. Agreement

- Permissible to combine the B.A. into a master B.A. or
 - memorandum of understanding (MOU)
 - contain all B.A. provisions using
 - “Receiving Party”
 - “Disclosing Party”



Reciprocal B.A. Agreement

- B.A. not C.E. not subject to HIPAA sanctions
- If B.A. is C.E. and violates HIPAA rule, it breeches B.A agreement

QUESTIONS AND ANSWERS

**RICHARD
CALDWELL**

DHFS

